

Remarks

Applicant would initially like to thank Examiner Padmanabhan and Examiner Yu for the courtesies extended to Applicant's representative during a telephone discussion of January 21, 2004. The subject Amendment is presented in accordance with this discussion.

Reconsideration of the subject application is respectfully requested in view of the preceding amendments and for the following reasons.

Claims 1-53 and 62-84 are pending in the subject application prior to entry of this Amendment. Of those claims, claims 1-9, 27-30 and 34-35 are withdrawn as being subject to a restriction requirement/election of species. The remaining claims, claim 10-26, 31-33, 36-53 and 62-84 are rejected in the outstanding Action. Of those claims, Applicant cancels, without prejudice, claims 1-9, 16-23, 32, 41-42, 45-46, 51-53, 62-69, 74-75 and 79-84. Applicant also amends claims 10, 24, 26-27, 30-31, 37, 40, 44, 70-73 and 76-78 and adds clarifying claims 85-88 as supported by claim 25 and page 5, and claim 89 as supported by claim 10 and page 11 of the specification. Applicant respectfully notes that the claims canceled herein, as well as subject matter canceled in any amendment, is not an admission that this subject matter is believed to be unpatentable. The subject matter canceled herein is canceled without prejudice to pursuing this matter in one or more continuing or divisional applications.

In the outstanding Action, the Patent Office rejects claims 10-26, 31-33, 36-53, 62-84 under 35 USC 112, first paragraph, as allegedly lacking written description support for "non-

neutralized," "not thereafter manually removed from the skin," as well as the viscosity limitations.

Applicant respectfully disagrees with the above rejections. For example, Applicant respectfully directs the Examiner's attention to the Examples in the specification and notes that viscosity is an inherent property of the compositions. However, in the interest of advancing the prosecution of this application, the wording objected to by the Examiner has been canceled without prejudice. Accordingly, the 35 USC 112, first paragraph, rejection should be withdrawn.

The Patent Office then rejects claims 10-26, 31-33, 36-53 and 62-84 under 35 USC 112, second paragraph, as allegedly being indefinite because of the use of "about" in claims 76-78 and 80-82, as well as the recitation of "acid peel."

Applicant respectfully disagrees with the above indefiniteness rejections. However, in the interest of advancing the prosecution of this application, the word "about" has been canceled without prejudice from claims 76-78. Regarding the Examiner's objection to the use of "acid peel," Applicant respectfully asserts that this term is not confusing nor used in a contradictory manner in Applicant's specification or claims. "Chemical peel" or "acid peel" are terms frequently used in the field of dermatology and would not be confusing to one of ordinary skill in the art. Pages 2-3 of Applicant's specification also describes peels, which use "peeling agents" for improving skin appearance. In the Summary of Invention section at page 3, Applicant describes the inventive "two-step acid peel" for the skin, which is gentle enough for use by the consumer at home, but capable of providing an improvement in the skin comparable to results previously obtained only by professionals using higher concentrations of acid. As supported throughout the specification as would be understood by one skilled in the art, an "acid peel" does

not necessarily imply that the product must literally be "peeled off of the skin." Moreover, a patentee may be his/her own lexicographer. In view of the foregoing, the Examiner is respectfully requested to reconsider and withdrawn this rejection.

The Patent Office further rejects claims 10-15, 24-26, 31-32, 36, 39, 43, 47-50 under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,720,949 to Davis ("Davis") in view of U.S. Patent Publication No. 2002/0098210 to Hahn et al. ("Hahn"). Similarly, claims 16-21, 51 and 53 are rejected as being obvious over Davis in view of Hahn and Kunz et al. ("Kunz", see U.S. Patent 6,171,347). Claims 33, 38 and 44 are rejected as being obvious over Davis in view of Hahn and U.S. Patent 5,242,433 to Smith et al. ("Smith"), and claims 42 and 52 are rejected as being obvious over Davis in view of Hahn, Kunz, and further in view of Smith. Lastly, dependent claims 22-23 are rejected as being unpatentable over Davis in view of Hahn, Kunz, U.S. Patent 4,797,273 to Linn et al. ("Linn") and STN Registry.

Applicant respectfully disagrees with the foregoing rejections and asserts that the aforementioned references, whether viewed alone or in any combination, neither disclose nor suggest Applicant's invention.

The Examiner's attention is respectfully directed to Applicant's prior remarks, which are hereby incorporated by reference, regarding the cited references. Applicant also notes that prior claims 75-82, including further compositional features, were not rejected in view of any prior art. Accordingly, in the interest of advancing the prosecution of the subject application, certain of these features have been incorporated into Applicant's independent claims. Applicant respectfully asserts that the cited references, whether viewed alone or in any combination, neither discloses nor suggests the presently claimed invention. Accordingly, reconsideration and

withdrawal of the above rejections is respectfully requested.

The Examiner is also respectfully requested to consider and rejoin all species claims in this application. Kindly also return an Examiner's initialed 1449 form for the IDS submitted by Applicant on July 28, 2003.

Applicant further respectfully notes that, in accordance with the Examiners' suggestions during the telephone discussion of January 21, 2004, the feature "not thereafter rinsed from the skin" has been set forth in each independent method claim and the kit claims have been canceled without prejudice to pursuing this subject matter in a divisional/continuing application. Similarly, in view of this discussion, clarifying claim 89, as supported by claim 10 and elsewhere, has been presented. As noted by the Examiner, col. 1, lines 41-43 of Davis does not show any criticality in the order of application of its first and second compositions of its mask. In contrast, Applicant claims the sequential steps a) of applying to the skin an acid peel having the features recited in Applicant's claim and b) neutralizing the first composition, as further recited in the claim. The criticality of this order and advantageous results have been set forth in the 1.132 Declaration of October 7, 2003, as appears to be recognized by the Examiner per the discussion of January 21, 2004. Moreover, Applicant specifies in the claim that Applicant's first and second compositions are not rinsed from the skin, which is in further contrast to the teachings of Davis, as also appears to be recognized by the Examiner. Accordingly, this claim is also respectfully believed to be in condition for allowance.

All outstanding issues having been addressed, the application is believed to be in condition for immediate allowance and such favorable action is earnestly solicited. No new issues are raised that would require an additional search. Accordingly, the Examiner is


respectfully requested to enter and consider this Amendment, and pass the subject application to allowance.

Should the Examiner have any questions regarding the subject application or should any outstanding issues remain, a call to the undersigned at 203-925-9400 (Ext. 17) would be sincerely appreciated.

No fee is believed to be required upon submission of this Amendment. However, the Commissioner is authorized to charge our deposit account 50-1924 (ref: 040.0001U1(US)) for any required fee associated with this correspondence.

Date: 1/23/04

Respectfully submitted,


Christine Wilkes Beninati
(Reg. No. 37,967)

Harrington & Smith, LLP
4 Research Drive
Shelton, CT 06484
Phone: 203-925-9400 (Ext. 17)
Facsimile: 203-944-0245
PTO Customer No. 29683